

Data Protection Newsletter

Hungarian DPA's revised guidelines on body temperature checks

October 21, 2020

On October 14, 2020, the Hungarian Data Protection Authority (NAIH) revised its previous guidelines on the use of diagnostic equipment in the context of the coronavirus epidemic. The key points of the new guidelines are set out in this newsletter.

Data processing requirements regarding body temperature checks

The NAIH outlined in its previous guidelines back in March that ordering the use of diagnostic equipment (in particular thermometers) was not proportionate considering the pandemic situation at that time. However, taking into account the current pandemic situation and the significant increase of cases in Hungary compared to March, the NAIH has now changed its position and finds body temperature checks to be a proportionate response to the current situation.

The NAIH pointed out that body temperature checks carried out by analogue or digital thermometers and even the use of thermal imagers and thermal screening entrance gates all constitute data processing if the data subject is an identified or identifiable natural person. They also stated that Hungarian legislation orders the application of the GDPR in such cases (i.e. non-automated data processing).

Considering the constantly and significantly rising number of cases in Hungary, the NAIH concluded that diagnostic screening devices related to body temperature measurement may be applied if the following criteria are collectively met:

- it is carried out in the course of entering an area or building that is owned or used by the data controller;
- it is **uniformly applied to all persons wishing to enter** as a protection measure;
- the temperature measurement is **not linked to any identity check of the person subject to the temperature measurement** specifically for the purpose of data processing; and
- it **does not in any way involve the recording, continued storage or transfer of data.**

The NAIH also laid down that **it is the responsibility of data controllers to be compliant with the fundamental data protection principles when carrying out data processing, such as applying temperature checks.**

It is also important to note that **drawing a conclusion from a person's body temperature is not lawful** (i.e. concluding that a person is infected with SARS-CoV-2 based on their body temperature). Therefore, data controllers may not draw conclusions regarding the health condition of a person; **they are only allowed to permit or refuse entry based on pre-defined and objective criteria.** The NAIH also pointed out that the **identification of a person subject to body temperature measurement for specifically this purpose is not allowed either before the temperature check or after the refusal of entry.** Such data may only be collected for statistical purposes.

Conclusions

We suggest data controllers review their current data processing practices regarding body temperature checks in light of the above requirements to be compliant with the revised guidelines. We also recommend updating and, if necessary, modifying the related data privacy documents.

The new guidelines are available (in Hungarian) at: <https://naih.hu/files/NAIH-2020-7465.pdf>

If you have any questions regarding the issues raised above, please do not hesitate to contact us.

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